

662⁷⁶

RECORDATION NO. _____ Filed & Recorded

JUN 12 1972 - 10 22 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 15, 1972

Between

THE DARBY PRODUCTS OF STEEL PLATE
CORPORATION

and

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of May 15, 1972

Between

THE DARBY PRODUCTS OF STEEL PLATE
CORPORATION

and

THE CITY NATIONAL BANK AND TRUST COMPANY
OF KANSAS CITY

Filed and recorded with the Interstate
Commerce Commission pursuant to Section
20c of the Interstate Commerce Act on
_____, 1972, recordation number

CONDITIONAL SALE AGREEMENT, dated as of May 15, 1972, between THE DARBY PRODUCTS OF STEEL PLATE CORPORATION, a Kansas corporation (hereinafter sometimes "Vendor" or sometimes "Manufacturer" as more particularly explained in Article 26 hereof) and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter "Railroad").

WHEREAS, the Manufacturer has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule A hereto (hereinafter called the "Equipment");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Schedule A hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications set forth in the Work Orders referred to in Schedule A hereto (which specifications are hereinafter called the "Specifications"). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Com-

mission requirements and specifications and to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment as of the date of this Agreement, and each unit of the Equipment will be a remanufactured car.

ARTICLE 2. Delivery. The Manufacturer will deliver the various units of the Equipment to the Railroad, freight charges, if any, prepaid, on Railroad's lines at Kansas City, Kansas, in accordance with the delivery schedule set forth in Schedule A hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commction, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, labor shortages or delays in receiving necessary materials.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad, and the Manufacturer shall grant to such inspector or such authorized representative reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector or other authorized representa-

tive of the Railroad for inspection at the place designated for delivery of such unit or units and, if such unit or units conform to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 6 hereof.

On delivery of each of the units of Equipment hereunder the Railroad assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. Purchase Price and Payment. The Purchase Prices per unit of the Equipment are set forth in Schedule A hereto. The Purchase prices include delivery and freight charges.

For the purpose of making settlement, the Equipment shall be divided into groups of units of the Equipment delivered and accepted by the Railroad hereunder (each such group being hereinafter called a "Group"). Each Group (except the Group for which settlement shall be made on the Final Closing Date, as hereinafter defined) shall consist of units of Equipment having an aggregate Purchase Price of not less than \$100,000.00, provided, however, that if there shall at any time have been delivered to and accepted by the Railroad units of Equipment and the Manufacturer shall be prevented by one or more of the causes referred to in the second para-

graph of Article 2 hereof from delivering additional units for a period of thirty days or more following the date of the last delivery of accepted units, such delivered and accepted units may constitute a Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, with interest at the rate of 6-3/4% per annum, as follows:

(a) The Purchase Price and the interest thereon are to be paid in ten equal semi-annual installments as hereinafter provided, each in the amount of Two Hundred Fifty-Six Thousand, One Hundred Fifty-Six and 26/100 Dollars (\$256,156.26) (except for appropriate adjustment of the final installment, to the extent the amount payable under this subparagraph (a) does not, when divided by ten (10), result in an integral cent and except as such installments may be reduced pursuant to Article 7 hereof); and

(b) Interest at the rate of 6-3/4% per annum shall be payable on the Final Closing Date on the aggregate Purchase Price of the units of Equipment constituting each Group for the period following the Interim Closing Date of each Group to the Final Closing Date.

The first installment payable pursuant to subparagraph (a) of the third paragraph of this Article 3 shall be payable six months after the Final Closing Date, and subsequent installments shall be payable at six-month intervals thereafter. Each installment payment shall be applied first to accrued interest and then in reduction of the principal balance.

The term "Interim Closing Date" with respect to any Group of the Equipment shall mean one of such dates (on or prior to August 1, August 21, September 5 and October 2, 1972, respectively) not more than ten business days following the presentation by the Manufacturer to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Interim Closing Date designated therein. The term "business days" as used herein means calendar days excluding Saturdays, Sundays and legal holidays.

The term "Final Closing Date" means such date (on or prior to November 1, 1972, not more than ten business days following the presentation by the Manufacturer to the Railroad of the final invoice and the final Certificate or Certificates of Acceptance, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Final Closing Date designated therein.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 7-3/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided for in Article 7 hereof, the Railroad shall not have the privilege of prepaying any installment on its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than income, gross receipts [except gross receipts in the nature of and in lieu of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title

of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind as long as it is contesting such taxes, assessments, licenses, charges, fines or penalties in good faith and by necessary legal proceedings and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto, or unless the Railroad shall have approved the payment thereof.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all

the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to

execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. Marking of Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with the identifying number as set out in Schedule A hereto and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil on each side of such unit, in letters not less than one inch in height, the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such name and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and word or words which may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units except with the consent of Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed,

recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered "Kansas City Southern", "KCS" or with the name or initials of any affiliate of the Railroad which is permitted to use the Equipment, or in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 7. Sale and Replacement of Equipment. In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall notify the Vendor of such Casualty Occurrences within ten days after the unit suffers such Casualty Occurrences. When the aggregate Casualty Value (as herein defined) of units known to have suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$100,000, the Railroad shall, within 30 days, pay to

the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of a Vice President or Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence. For all purposes of this Article 7 the Casualty Value of any unit suffering a Casualty Occurrence shall be the higher of the cost of such unit or the cost of acquiring a similar unit at the time of such payment to the Vendor with respect to such Casualty Occurrence, less in each case depreciation at the annual rate approved by the Interstate Commerce Commission for such unit (but not in excess of 6% per annum) for each period of twelve calendar months elapsed since the date of delivery and acceptance of such unit to the date of such payment.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, so long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor in such number of counterparts or copies as may reasonably be requested, to prepay the indebtedness of the Railroad in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment of equivalent value to replace such unit or units having

suffered a Casualty Occurrence. In case any such money shall be applied to prepay indebtedness, it shall be so applied to installments thereafter falling due in the inverse order of maturity thereof, but without premium, and whether or not such amount shall be sufficient to prepay one or more entire installments of the indebtedness in respect of the Purchase Price. When any such money shall be applied to prepay indebtedness, the remaining installments payable pursuant to subparagraph (a) of the third paragraph of Article 3 hereof shall be reduced by an amount equal to the interest which would have accrued with respect to the amount prepaid at the rate of 6-3/4% per annum.

In case of replacement the amount to be paid by the Vendor with respect to any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor and the Railroad shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Vendor shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

The Railroad will cause any replacing unit to be marked as provided in Article 6 hereof. Any and all such replacements of

Equipment shall be deemed Equipment as such term is used in this Agreement and shall be subject to all terms and conditions of this Agreement as though part of the original Equipment delivered hereunder. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to become subject to this Agreement and to protect the title of the Vendor to such replacements. All such replacements shall be warranted in like manner as the original Equipment delivered hereunder, and the Railroad hereby agrees to obtain the consent of the manufacturer of such replacements, if other than the Manufacturer, that such replacements shall become subject to this Agreement and the agreement of such manufacturer to be bound by all terms and provisions contained herein with respect to such replacements in like manner as the Manufacturer is with respect to the original Equipment delivered hereunder.

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 7, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith, in such number of counterparts or copies as may reasonably be requested,

(1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment first put into service no earlier than September 1, 1972, and has been marked as required by the provisions of this Article 7 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on the earliest date when any such money was paid to the Vendor; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Vendor free and clear of all liens and encumbrances and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7, shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) certificates of deposit of commercial banks in the United States of America having a combined capital and surplus and undivided profits of not less than \$25,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any Investments shall be sold by the Vendor at or about the

time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 7. Any interest or earned discount received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or payment at maturity of any Investments, the proceeds thereof, plus any interest or earned discount received by the Vendor thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Vendor for application pursuant to this Article 7. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency; and, unless an event of default specified in Article 16 hereof shall have occurred and be continuing, if the amounts received thereon including interest received upon or prior to such disposition shall exceed such cost, the excess shall be paid to the Railroad upon its written request. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

In the event that any moneys paid to, or held by, the Vendor pursuant to this Article 7 are applied to the prepayment of indebtedness in respect of the Purchase Price, the Railroad will pay to the Vendor on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If any of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 (including for this purpose Investments and interest thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale, remanufacture or other disposition of any units of the Equipment suffering a Casualty Occurrence, the Vendor shall, after deposit by the Railroad of the amount required to be deposited hereunder with respect to such units, execute and deliver to the Railroad or to the Railroad's vendee, assignee or nominee, a bill of sale for such units and such other documents as may be required to release such units from the terms and scope of this Agreement in such form that said release may be filed and recorded with the Interstate Commerce Commission pursuant to the provisions of Section 20c of the Interstate Commerce Act.

ARTICLE 8. Maintenance and Repair. The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 9. Compliance with Laws and Rules. During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Interstate

Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. Reports and Inspections. On or before September 1 in each year, commencing with the year 1973, the Railroad will furnish to the Vendor an accurate statement (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding twelve months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in case of all Equipment repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The

Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. Possession and Use. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Railroad, to the possession of the Equipment and the use thereof upon the lines of Railroad owned or operated by the Railroad or over which the Railroad has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic, and may be leased to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns, which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 13. Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all

losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Manufacturer guarantees that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Manufacturer) or workmanship or design (except as to designs specified by the Railroad and not developed or purported to be developed by the Manufacturer) under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after

the delivery of such unit to the Railroad, be returned to the Manufacturer with transportation charges prepaid and which then appear to the Manufacturer's satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability, or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Article 1, 2, 3 and 14, hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. The Manufacturer further agrees with the Railroad that the acceptance of any units by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this paragraph.

ARTICLE 14. Patent Indemnities. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or

material infringing or claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit, thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Manufac-

turer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, or except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company (including a successor corporation by consolidation or merger) which shall **acquire** all or substantially all the property of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned

by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to cause to be constructed and to deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Articles 13 and 14 hereof, or relieve the Railroad of its obligations to the Manufacturer under Articles 2, 4, 13 and 14 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this char-

acter and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance of any persons, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery, guaranty or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the names and word or words to

be marked on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the Manufacturer

on the Final Closing Date or on the Interim Closing Date with respect to a Group of Equipment of an amount equal to the Purchase Price of the units of Equipment comprising the Group as set forth in Schedule A hereto, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than ninety days after such Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the date of payment by the Railroad at the prime rate of interest of leading Kansas City, Missouri banks in effect at such Closing Date.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by it hereunder within three days after the same shall have become due; or

(b) The Railroad shall, for more than 10 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term, or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for

the property of the Railroad in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment as set forth in the third paragraph of Article 3 then accrued and unpaid, immediately due and payable to the extent legally enforceable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 7-3/4% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if

no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of Railroad or premises of the Railroad until the Vendor shall have leased, sold, or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor which is or are reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter dur-

ing the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as hereinafter is set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the thirty-day period described below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of such thirty-day period, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under

this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, however, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within thirty days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

The Vendor, with or without retaking possession thereof at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming by, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest

thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorney's fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment or any unit thereof, so offered for sale without accountability to

the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all

sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place

and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. Extension not a Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. Recording. The Railroad will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited if necessary, with the Interstate Commerce Commission, and otherwise, as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions

of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses of the first assignee of this Agreement and of any party or parties acquiring interests in such first assignment, whether (a) incident to (i) the printing, execution or recording of this Agreement, of such first assignment, of an instrument supplemental or amendatory of this Agreement or such first assignment, and of any certificate of payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder, (ii) payments to the Manufacturer by such first assignee and (iii) the transfer by any party or parties of interests acquired in such first assignment, or (b) otherwise incident to such first assignment, including fees and expenses of counsel (except of counsel for the Manufacturer), stamp and other taxes, if any.

ARTICLE 22. Notice. Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to it at its address below:

(a) to the Railroad, at 114 West Eleventh Street, Kansas City, Missouri 64105,

(b) to the Manufacturer, at First Street and Walker Avenue, Kansas City, Kansas 66110,

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Headings. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. Effect and Modification of Agreement. This Agreement, and the schedule relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad represents and warrants that its chief place of business is in the State of Missouri.

ARTICLE 26. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, The Darby Products of Steel Plate Corporation and any successor or successors for the time being to its manufacturing properties and business and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, The Darby Products of Steel Plate Corporation and any successor or successors for the time being to its manufacturing properties and business.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE DARBY PRODUCTS OF STEEL PLATE
CORPORATION

(Corporate Seal)

ATTEST:

By W. J. Haynes, Jr.
W. J. Haynes, Jr., President

Assistant Secretary

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

(Corporate Seal)

By L. C. Ditch
EXECUTIVE VICE PRESIDENT

ATTEST:

J. E. Kellogg

STATE OF ~~KANSAS~~ MISSOURI)
COUNTY OF ~~WYANDOTTE~~ JACKSON) ss.

On this 9th day of June, 1972, before me personally appeared W. J. HAYNES, JR., to me personally known who, being by me duly sworn, says that he is President of The Darby Products of Steel Plate Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. R. Gibbins
Notary Public

My commission expires:
November 30, 1973

STATE OF MISSOURI)
COUNTY OF JACKSON) ss

On this 9th day of June, 1972, before me personally appeared L. C. Ditch, to me personally known, who, being by me duly sworn, says that he is Executive Vice President of The Kansas City Southern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

S. B. Niedermeyer
Notary Public

My commission expires:
May 29, 1975

SCHEDULE A

Type (AAR Desig.)	Specifications As Set Forth in Work Order No.	Manu- facturer's Plant	Quantity	Railroad Road Numbers (Stenciled)	(ACI Number)	Unit Purchase Price	Total Purchase Price	Delivery Dates & Place
Gondola - Wheel Cars (GBS)	72-7835	Kansas City Kansas	5	KCS 8907 KCS 8915 KCS 8923 KCS 8931 KCS 8940	0400 008907 9 0400 008915 0 0400 008923 2 0400 008931 4 0400 008940 1	\$8,084	\$40,420	During the period July 1 through November 1, 1972, on Railroad's lines at Kansas City, Kansas
Gondola - Tie Cars (GBS)	72-7834	Kansas City Kansas	25	KCS 276502 KCS 276511 KCS 276529 KCS 276537 KCS 276545 KCS 276553 KCS 276561 KCS 276570 KCS 276588 KCS 276596 KCS 276600 KCS 276618 KCS 276626 KCS 276634 KCS 276642 KCS 276651 KCS 276669 KCS 276677 KCS 276685 KCS 276693 KCS 276707 KCS 276715 KCS 276723 KCS 276731 KCS 276740	0400 276502 2 0400 276511 * 0400 276529 6 0400 276537 8 0400 276545 * 0400 276553 1 0400 276561 3 0400 276570 0 0400 276588 7 0400 276596 9 0400 276600 8 0400 276618 4 0400 276626 6 0400 276634 8 0400 276642 * 0400 276651 7 0400 276669 3 0400 276677 5 0400 276685 7 0400 276693 9 0400 276707 2 0400 276715 4 0400 276723 6 0400 276731 8 0400 276740 5	6,050	151,250	" "

SCHEDULE A (Con't)

Type (AAR Desig.)	Specifications As Set Forth in Work Order No.	Manu- facturer's Plant	Quantity	Railroad Road Numbers (Stenciled)	(ACI Number)	Unit Purchase Price	Total Purchase Price	Delivery Dates and Place	
50-Ton Box Cars (XP)	72-7833	Kansas City Kansas	31	KCS 131008 KCS 131016 KCS 131024 KCS 131032 KCS 131041 KCS 131059 KCS 131067 KCS 131075 KCS 131083 KCS 131091 KCS 131105 KCS 131113 KCS 131121 KCS 131130 KCS 131148 KCS 131156 KCS 131164 KCS 131172 KCS 131181 KCS 131199 KCS 131202 KCS 131211 KCS 131229 KCS 131237 KCS 131245 KCS 131253 KCS 131261 KCS 131270 KCS 131288 KCS 131296 KCS 131300	0400 131008 0400 131016 0400 131024 0400 131032 0400 131041 0400 131059 0400 131067 0400 131075 0400 131083 0400 131091 0400 131105 0400 131113 0400 131121 0400 131130 0400 131148 0400 131156 0400 131164 0400 131172 0400 131181 0400 131199 0400 131202 0400 131211 0400 131229 0400 131237 0400 131245 0400 131253 0400 131261 0400 131270 0400 131288 0400 131296 0400 131300	1 3 5 7 4 0 2 4 6 8 1 3 5 2 9 0 2 4 1 8 1 9 5 7 9 0- 2 * 6 8 7	\$9,636	\$298,716	During the period July 1 through November 1, 1972, on Railroad's lines at Kansas City, Kansas

SCHEDULE A (Con't)

P.3

Box Cars (XP)	72-7832	Specifications As Set Forth in (AAR Desig.) Work Order No.	Manu- facturer's Plant	Quantity	Railroad		Unit Purchase Price	Total Purchase Price	Delivery Dates and Places
					Road Numbers (Stenciled)	(ACL Number)			
			Kansas City Kansas	100	KCS 130001	0400 130001 5	\$8,151	\$815,100	During the Period July 1 through Novem- ber 1, 1972, on Railroad's lines at Kansas City, Kansas
					KCS 130010	0400 130010 2			
					KCS 130028	0400 130028 9			
					KCS 130036	0400 130036 0			
					KCS 130044	0400 130044 2			
					KCS 130052	0400 130052 4			
					KCS 130061	0400 130061 1			
					KCS 130079	0400 130079 8			
					KCS 130087	0400 130087 *			
					KCS 130095	0400 130095 1			
					KCS 130109	0400 130109 5			
					KCS 130117	0400 130117 7			
					KCS 130125	0400 130125 9			
					KCS 130133	0400 130133 0			
					KCS 130141	0400 130141 2			
					KCS 130150	0400 130150 *			
					KCS 130168	0400 130168 6			
					KCS 130176	0400 130176 8			
					KCS 130184	0400 130184 *			
					KCS 130192	0400 130192 1			
					KCS 130206	0400 130206 5			
					KCS 130214	0400 130214 7			
					KCS 130222	0400 130222 9			
					KCS 130231	0400 130231 6			
					KCS 130249	0400 130249 2			
					KCS 130257	0400 130257 4			
					KCS 130265	0400 130265 6			
					KCS 130273	0400 130273 8			
					KCS 130281	0400 130281 *			
					KCS 130290	0400 130290 7			
					KCS 130303	0400 130303 5			
					KCS 130311	0400 130311 7			
					KCS 130320	0400 130320 4			
					KCS 130338	0400 130338 0			
					KCS 130346	0400 130346 2			
					KCS 130354	0400 130354 4			

Type ARR Desig.)	Specifications as set forth in Work Order No.	Manu- facturer's Plant	Quantity	Railroad Road Numbers (Stenciled)	(ACI Number)	Unit Purchase Price	Total Purchase Price	Delivery Dates
Box Cars (XP) (Con't)								
				KCS 130362	0400 130362	6		During the period July 1 through November 1, 1972, on Railroad's lines at Kansas City, Kansas
				KCS 130371	0400 130371	3		
				KCS 130389	0400 130389	*		
				KCS 130397	0400 130397	1		
				KCS 130401	0400 130401	0		
				KCS 130419	0400 130419	7		
				KCS 130427	0400 130427	9		
				KCS 130435	0400 130435	0		
				KCS 130443	0400 130443	2		
				KCS 130451	0400 130451	4		
				KCS 130460	0400 130460	1		
				KCS 130478	0400 130478	8		
				KCS 130486	0400 130486	*		
				KCS 130494	0400 130494	1		
				KCS 130508	0400 130508	5		
				KCS 130516	0400 130516	7		
				KCS 130524	0400 130524	9		
				KCS 130532	0400 130532	0		
				KCS 130541	0400 130541	8		
				KCS 130559	0400 130559	4		
				KCS 130567	0400 130567	6		
				KCS 130575	0400 130575	8		
				KCS 130583	0400 130583	*		
				KCS 130591	0400 130591	1		
				KCS 130605	0400 130605	5		
				KCS 130613	0400 130613	7		
				KCS 130621	0400 130621	9		
				KCS 130630	0400 130630	6		
				KCS 130648	0400 130648	2		
				KCS 130656	0400 130656	4		
				KCS 130664	0400 130664	6		
				KCS 130672	0400 130672	8		
				KCS 130681	0400 130681	5		
				KCS 130699	0400 130699	1		
				KCS 130702	0400 130702	5		
				KCS 130711	0400 130711	2		
				KCS 130729	0400 130729	9		
				KCS 130737	0400 130737	0		

Type (AAR Desig.)	Specifications As Set Forth in Work Order No.	Manu- facturer's Plant	SCHEDULE A (Con't)		Unit Purchase Price	Total Purchase Price	Delivery Dates & Places
			Quantity	Railroad Road Numbers (ACI Number)			

Box Cars
(XP) (Con't)

KCS 130745	0400 130745	2
KCS 130753	0400 130753	4
KCS 130761	0400 130761	6
KCS 130770	0400 130770	3
KCS 130788	0400 130788	*
KCS 130796	0400 130796	1
KCS 130800	0400 130800	0
KCS 130818	0400 130818	7
KCS 130826	0400 130826	9
KCS 130834	0400 130834	0
KCS 130842	0400 130842	2
KCS 130851	0400 130851	*
KCS 130869	0400 130869	6
KCS 130877	0400 130877	8
KCS 130885	0400 130885	*
KCS 130893	0400 130893	1
KCS 130907	0400 130907	5
KCS 130915	0400 130915	7
KCS 130923	0400 130923	9
KCS 130931	0400 130931	0
KCS 130940	0400 130940	8
KCS 130958	0400 130958	4
KCS 130966	0400 130966	6
KCS 130974	0400 130974	8
KCS 130982	0400 130982	*
KCS 130991	0400 130991	7

During the
period July 1,
through Novem-
ber 1, 1972, on
Railroad's
lines at Kansas
City, Kansas

Pulpwood Bulk-
head Flat Cars
(LP)

72-7895 Kansas City 150

KCS 603503	0400 603503	8	\$5,589	\$838,350
KCS 603511	0400 603511	*		
KCS 603520	0400 603520	7		
KCS 603538	0400 603538	3		
KCS 603546	0400 603546	5		
KCS 603554	0400 603554	7		
KCS 603562	0400 603562	9		
KCS 603571	0400 603571	6		
KCS 603589	0400 603589	2		

" "

SCHEDULE A (Con't)

Type (AAR Desig.)	Specifications As Set Forth in Work Order No.	Manu- facturer's Plant	Quantity	Railroad		Unit Purchase Price	Total Purchase PRICE	Delivery Dates & Places
				Road Numbers (Stenciled)	Numbers (ACI Number)			
Pulpwood Bulk- head Flat Cars (LP) (con't)			KCS 603597		0400 603597	4		During the period July 1 through November 1, 1972, on railroad's lines at Kansas City, Kansas
			KCS 603601		0400 603601	3		
			KCS 603619		0400 603619	*		
			KCS 603627		0400 603627	1		
			KCS 603635		0400 603635	3		
			KCS 603643		0400 603643	5		
			KCS 603651		0400 603651	7		
			KCS 603660		0400 603660	4		
			KCS 603678		0400 603678	0		
			KCS 603686		0400 603686	2		
			KCS 603694		0400 603694	4		
			KCS 603708		0400 603708	8		
			KCS 603716		0400 603716	*		
			KCS 603724		0400 603724	1		
			KCS 603732		0400 603732	3		
			KCS 603741		0400 603741	0		
			KCS 603759		0400 603759	7		
			KCS 603767		0400 603767	9		
			KCS 603775		0400 603775	0		
			KCS 603783		0400 603783	2		
			KCS 603791		0400 603791	4		
			KCS 603805		0400 603805	8		
			KCS 603813		0400 603813	*		
			KCS 603821		0400 603821	1		
			KCS 603830		0400 603830	9		
			KCS 603848		0400 603848	5		
			KCS 603856		0400 603856	7		
			KCS 603864		0400 603864	9		
			KCS 603872		0400 603872	0		
			KCS 603881		0400 603881	8		
			KCS 603899		0400 603899	4		
			KCS 603902		0400 603902	8		
			KCS 603911		0400 603911	5		
			KCS 603929		0400 603929	1		
			KCS 603937		0400 603937	3		
			KCS 603945		0400 603945	5		
			KCS 603953		0400 603953	7		

SCHEDULE A (Con't)

p. 7

Type (A&R Desig.)	Specifications As Set Forth in Work Order NO.	Manu- facturer's Plant	Quantity	Railroad Road Numbers (Stenciled)	(ACI Number)	Unit Purchase Price	Total Purchase Price	Delivery Dates and Places
Pulpwood Bulk- head Flat Cars (LP) (Con't)								
				KCS 603961	0400 603961	9		During the period July 1 through November 1, 1972 on Railroad's lines at Kansas City, Kansas
				KCS 603970	0400 603970	6		
				KCS 603988	0400 603988	2		
				KCS 603996	0400 603996	4		
				KCS 604003	0400 604003	4		
				KCS 604011	0400 604011	6		
				KCS 604020	0400 604020	3		
				KCS 604038	0400 604038	*		
				KCS 604046	0400 604046	1		
				KCS 604054	0400 604054	3		
				KCS 604062	0400 604062	5		
				KCS 604071	0400 604071	2		
				KCS 604089	0400 604089	9		
				KCS 604097	0400 604097	0		
				KCS 604101	0400 604101	*		
				KCS 604119	0400 604119	6		
				KCS 604127	0400 604127	8		
				KCS 604135	0400 604135	*		
				KCS 604143	0400 604143	1		
				KCS 604151	0400 604151	3		
				KCS 604160	0400 604160	0		
				KCS 604178	0400 604178	7		
				KCS 604186	0400 604186	9		
				KCS 604194	0400 604194	0		
				KCS 604208	0400 604208	4		
				KCS 604216	0400 604216	6		
				KCS 604224	0400 604224	8		
				KCS 604232	0400 604232	*		
				KCS 604241	0400 604241	7		
				KCS 604259	0400 604259	3		
				KCS 604267	0400 604267	5		
				KCS 604275	0400 604275	7		
				KCS 604283	0400 604283	9		
				KCS 604291	0400 604291	0		
				KCS 604305	0400 604305	4		
				KCS 604313	0400 604313	6		
				KCS 604321	0400 604321	8		

SCHEDULE A (Con't)

Type (AAR Desig.)	Specifications As Set Forth in Work Order NO.	Manu- facturer's Plant	Quantity	Road Numbers		Unit Purchase Price	Total Purchase Price	Delivery Dates & Places
				(Stenciled)	(ACI Number)			
Pulpwood Bulk- head Flat Cars LP (Con't)				KCS 604330	0400 604330 5			During the period July 1 through November 1, 1972, on Railroad's lines at Kansas City, Kansas
				KCS 604348	0400 604348 1			
				KCS 604356	0400 604356 3			
				KCS 604364	0400 604364 5			
				KCS 604372	0400 604372 7			
				KCS 604381	0400 604381 4			
				KCS 604399	0400 604399 0			
				KCS 604402	0400 604402 4			
				KCS 604411	0400 604411 1			
				KCS 604429	0400 604429 8			
				KCS 604437	0400 604437 *			
				KCS 604445	0400 604445 1			
				KCS 604453	0400 604453 3			
				KCS 604461	0400 604461 5			
				KCS 604470	0400 604470 2			
				KCS 604488	0400 604488 9			
				KCS 604496	0400 604496 0			
				KCS 604500	0400 604500 *			
				KCS 604518	0400 604518 6			
				KCS 604526	0400 604526 8			
				KCS 604534	0400 604534 *			
				KCS 604542	0400 604542 1			
				KCS 604551	0400 604551 9			
				KCS 604569	0400 604569 5			
				KCS 604577	0400 604577 7			
				KCS 604585	0400 604585 9			
				KCS 604593	0400 604593 0			
				KCS 604607	0400 604607 4			
				KCS 604615	0400 604615 6			
				KCS 604623	0400 604623 8			
				KCS 604631	0400 604631 *			
				KCS 604640	0400 604640 7			
				KCS 604658	0400 604658 3			
				KCS 604666	0400 604666 5			
				KCS 604674	0400 604674 7			
				KCS 604682	0400 604682 9			
				KCS 604691	0400 604691 6			
				KCS 604704	0400 604704 4			
				KCS 604712	0400 604712 6			

SCHEDULE A (Con't)

Type (AAR Desig.)	Specifications As Set Forth in Work Order No.	Manu- facturer's Plant	Quantity	Railroad Road Numbers (Stenciled) (ACI Number)	Unit Purchase Price	Total Purchase Price	Delivery Dates & Places
Pulpwood Bulk- Head Flat Cars (LP) (Con't)							During the period July 1 through November 1, 1972, on Railroad's lines at Kansas City, Kansas
			KCS 604721	0400 604721 3			
			KCS 604739	0400 604739 *			
			KCS 604747	0400 604747 1			
			KCS 604755	0400 604755 3			
			KCS 604763	0400 604763 5			
			KCS 604771	0400 604771 7			
			KCS 604780	0400 604780 4			
			KCS 604798	0400 604798 0			
			KCS 604801	0400 604801 4			
			KCS 604810	0400 604810 1			
			KCS 604828	0400 604828 8			
			KCS 604836	0400 604836 *			
			KCS 604844	0400 604844 1			
			KCS 604852	0400 604852 3			
			KCS 604861	0400 604861 0			
			KCS 604879	0400 604879 7			
			KCS 604887	0400 604887 9			
			KCS 604895	0400 604895 0			
			KCS 604909	0400 604909 4			
			KCS 604917	0400 604917 6			
			KCS 604925	0400 604925 8			
			KCS 604933	0400 604933 *			
			KCS 604941	0400 604941 1			
			KCS 604950	0400 604950 9			
			KCS 604968	0400 604968 5			
			KCS 604976	0400 604976 7			
			KCS 604984	0400 604984 9			
			KCS 604992	0400 604992 0			

TOTALS

311

\$2,143,836

AGREEMENT AND ASSIGNMENT dated as of May 15, 1972, between THE DARBY PRODUCTS OF STEEL PLATE CORPORATION, a Kansas corporation (hereinafter "Manufacturer") and THE CITY NATIONAL BANK AND TRUST COMPANY OF KANSAS CITY, a national banking association with its main banking house at Tenth and Grand Avenue, Kansas City, Missouri, 64106 (hereinafter "Assignee").

WHEREAS, the Manufacturer and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter "Railroad") have entered into a Conditional Sale Agreement dated as of May 15, 1972 (hereinafter "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth, by the Manufacturer, and the purchase by the Railroad, of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter referred to as the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT, WITNESSETH: That in consideration of the premises and the mutual covenants herein contained and in further consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Manufacturer, receipt of which is hereby acknowledged:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof), and in and to any and all amounts which may be or become due or owing to the manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) All the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement, except as limited in subparagraph (b) above;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with any of the provisions of, the Conditional Sale Agreement (other than breach of the provision for waiver of defenses, setoffs, counterclaims and recoupment contained in Article 15 of the Conditional Sale Agreement, as to which the Assignee has such recourse against the Manufacturer as is provided in Section 2 hereof); provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its guarantees, warranties and indemnities contained in Articles 13 and 14 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the

Manufacturer under Articles 2, 4, 13 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent Assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement which are to be performed and complied with by the Manufacturer. The Manufacturer further warrants

to the Assignee and the Railroad that it has and at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, and that title to such unit is free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to such delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provisions of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or re-

coupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 13 and 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. The Manufacturer shall have no liability under the foregoing provision of this paragraph unless (a) the Assignee, in any such suit, proceeding or action by the Assignee, hereinabove in this paragraph described, promptly moves or takes other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any such defense, setoff or counterclaim asserted by the Railroad and the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit, proceeding or action, and (b) upon any such denial and acceptance the Assignee promptly notifies the Manufacturer of any such defense, setoff or counterclaim asserted by the Railroad and the Manufacturer is given the right by the Assignee to compromise, settle or defend against such defense, setoff or counterclaim.

Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and material specified by the Railroad and not manu-

factured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claims against the Assignee under which liability may be charged against the Manufacturer by reason of this Section 2 promptly after the Assignee shall itself have received notice of the same.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"THE CITY NATIONAL BANK AND TRUST COMPANY
OF KANSAS CITY, OWNER"

SECTION 4. Upon request of the Assignee, its successors and assigns, and after payment to the Manufacturer as provided in Section 5 hereof, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3), shall pay to the Manufacturer an amount equal to the Purchase Price of the units of Equipment comprising such Group as set forth in Schedule A of the Conditional Sale Agreement, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it:

(a) Bill of Sale from the Manufacturer to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of Acceptance signed by an inspector or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been inspected and accepted by him on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on each side of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

"THE CITY NATIONAL BANK AND TRUST COMPANY OF
KANSAS CITY, OWNER"

(c) Invoice for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units as set forth in said invoice;

(d) Opinion of Messrs. Watson, Ess, Marshall & Enggas who are acting as counsel for the Assignee, dated as of such

Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto, and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Manufacturer and is a valid instrument binding upon it, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were owned by the Manufacturer free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment and (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America;

(e) Opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above, stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of Missouri, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad and is a valid and binding instrument enforceable against the Railroad in accordance with its terms and (iii) the Conditional Sale Agreement and this Assignment have been duly filed, recorded and deposited in accordance with Article 20 of the Conditional Sale Agreement;

(f) Opinion of counsel for the Manufacturer, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the State of Kansas, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized,

executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (d) of the first paragraph of this Section 5, counsel may in fact rely, as to any matter governed by the law of any jurisdiction other than Missouri or the United States, on the opinions of counsel for the Manufacturer or counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make any of the above mentioned payments at any time while an event of default, or any event which with the lapse of time or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Railroad) it is a valid and existing agreement binding upon the Manufacturer and the Railroad, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate

Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Agreement and Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Agreement and Assignment shall be filed, recorded or deposited.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

(Corporate Seal)

ATTEST:

[Signature]
Asst. Secretary

THE DARBY PRODUCTS OF STEEL PLATE CORPORATION

By

[Signature]
W. J. Haynes, Jr., President

(Corporate Seal)

ATTEST:

[Signature]
Asst. Secretary

THE CITY NATIONAL BANK AND TRUST COMPANY OF KANSAS CITY

By

[Signature]
Ex VP

STATE OF ~~KANSAS~~ ^{MISSOURI})
COUNTY OF ~~WYANDOTTE~~ ^{JACKSON}) ss.

On this 9th day of June, 1972, before me personally appeared W. J. HAYNES, JR., to me personally known who, being by me duly sworn, says that he is President of The Darby Products of Steel Plate Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. R. Gibbins
Notary Public

My commission expires: September 30, 1973

STATE OF Missouri)
COUNTY OF Jackson) ss.

On this 9th day of June, 1972, before me personally appeared C. P. Schupp, to me personally known who, being by me duly sworn, says that he is Executive Vice President of THE CITY NATIONAL BANK AND TRUST COMPANY OF KANSAS CITY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joan McKinney Tate
Notary Public

My commission expires: My Commission Expires Aug 18 1977

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the Assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 9, 1972.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By L. C. Smith

EXECUTIVE VICE PRESIDENT